

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 40

SENATOR WELD, *original sponsor*

[Originating in the Committee on the Judiciary; Reported

on January 25, 2019]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, and §62-16-5, all relating to
3 establishing a Military Service Members Court program within the Supreme Court of
4 Appeals; defining terms; granting authority to the Supreme Court of Appeals to establish
5 a Military Service Members Court program under the oversight of its administrator;
6 providing for no termination of any program until at least six months after written notice of
7 the intent to terminate the program has been provided by the Supreme Court of Appeal
8 Administrator to the Speaker of the House of Delegates and the President of the Senate;
9 providing for funding mechanisms which may include court fees; providing for limitation of
10 liability; setting forth structure of the court; setting forth eligibility requirements for
11 participation; providing for written agreement to participate in the court; setting forth
12 procedure to participate in court; allowing for mental health and drug treatment services
13 for participants; providing for sanctions for violation of provisions of the court; setting forth
14 incentives for successful participation; and setting out disposition on successful
15 completion.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.

§62-16-1. Short title.

1 This article may be cited as the Military Service Members Court Act.

§62-16-2. Definitions.

1 For the purposes of this article:

2 “Assessment” means an evaluation to determine whether a criminal defendant is a military
3 service member as defined by this section, that the offense he or she has been charged with is
4 attributable to their military service, and if the offender would benefit from the provisions set forth
5 in this article.

6 “Court” means a Military Service Members Court.

7 “Department” means the West Virginia Department of Veterans Assistance.

8 “Military Service Members Court program” or “program” is a program that includes
9 preadjudicatory and post-adjudicatory treatment for military service members.

10 “Military service member” means a person who is currently serving in the Army, Air Force,
11 Marines, Navy, or Coast Guard on active duty, reserve status, or in the National Guard, or a
12 person who served in the active military, or who was discharged or released under conditions
13 other than dishonorable.

14 “Offender” means a criminal defendant who qualifies as a military service member under
15 this article.

16 “VA” means the United States Department of Veterans Affairs.

17 “VJO” means the Veterans Justice Outreach program of the United States Department of
18 Veterans Affairs.

19 “Written agreement” means the agreement executed to allow a military service member
20 to participate in a court program.

§62-16-3. Court authorization; funding; immunity from liability.

1 (a) Court authorization. — The Supreme Court of Appeals is hereby authorized to
2 establish a Military Service Members Court program, under the oversight of its administrator.
3 Each Military Service Members Court may be a stand-alone court or operated in conjunction with
4 an existing drug court or other specialty court program. The Supreme Court of Appeals is further
5 encouraged to give deference to circuits or regions in the operation of those programs to maximize
6 flexibility, and to take into account regional and other differences and circumstance.

7 (b) Once a program is established, termination of any program may not take place until at
8 least six months after written notice of the intent to terminate the program has been provided by
9 the Supreme Court of Appeals Administrator to the Speaker of the House of Delegates and the
10 President of the Senate.

11 (c) Each court judge may establish rules and may make special orders as necessary that
12 do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate
13 the purposes of this article.

14 (d) Nothing contained in this article confers a right or an expectation of a right to participate
15 in a court program nor does it obligate a court to accept every military service member offender.

16 (e) Neither the establishment of a Military Service Members Court nor anything in this
17 article may be construed as limiting the discretion of the prosecuting attorney to act on any
18 criminal case which he or she determines advisable to prosecute.

19 (f) Funding. — Each Military Service Members Court, with the guidance of the Supreme
20 Court of Appeals, may establish a schedule for the payment of reasonable fees and costs to be
21 paid by participants necessary to conduct the program.

22 (g) Nothing in this article prohibits Military Service Members Courts from obtaining
23 supplemental funds or exploring grants to support the courts.

24 (h) Immunity from liability. — Any person who, in good faith, provides services pursuant
25 to this article is not liable in any civil action, unless his or her actions were the result of gross
26 negligence or willful misconduct. The grant of immunity provided in this section extends to all
27 employees and administrative personnel of a court.

§62-16-4. Eligibility; written agreement.

1 (a) Eligibility. — A military service member offender, who is eligible for probation based
2 upon the nature of the offense for which he or she has been charged, and in consideration of his
3 or her criminal background, if any, may, upon application, be admitted into a court program only
4 upon the agreement of the prosecutor and the offender. Additionally, the court must also
5 determine that the offense is in any way attributable to the offender's military service.

6 (b) A military service member offender may not participate in the court program if he or
7 she has been charged with any of the following offenses:

8 (1) A sexual offense, including, but not limited to, a violation of the felony provisions of
9 §61-8-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this code, or a criminal
10 offense where the judge has made a written finding that the offense was sexually motivated;

11 (2) A felony violation of the provisions of §61-8D-2, §61-8D-2a, or §61-8D-3a of this code;

12 (3) A felony violation of the provisions of §61-14-3 or §61-14-4 of this code;

13 (4) A felony violation of §61-2-9b or §61-2-14 of this code;

14 (5) A felony violation of §61-2-28 of this code;

15 (6) A felony violation of §17C-5-2(b) of this code; or

16 (7) If he or she has previously been convicted in this state, another state, or in a federal
17 court for any of the offenses enumerated above.

18 (c) *Written agreement.* — Participation in a Military Service Members Court program, with
19 the consent of both the prosecutor and the court, shall be pursuant to a written agreement. This
20 written agreement shall set forth all of the agreed upon provisions to allow the military service
21 member offender to proceed in the court. The offender shall execute a written agreement with
22 the court as to his or her participation in the program and shall agree to all of the terms and
23 conditions of the program, including, but not limited to, the possibility of sanctions or incarceration
24 for failing to comply with the terms of the program.

25 (d) Upon successful completion of a court program, the judge shall dispose of an
26 offender's case in the manner prescribed by the written agreement and by the applicable policies
27 and procedures adopted by the court. Disposition may include, but is not limited to, withholding
28 criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing,
29 split sentencing, or a reduced period of incarceration.

§62-16-5. Procedure; mental health and substance abuse treatment; violation; termination.

1 (a) *Procedure.* — Upon application, the court shall order the offender to submit to an
2 eligibility screening, a mental health and drug/alcohol screening, and an assessment by the
3 Department of Veterans Affairs (VA) Veterans Justice Outreach to provide information on the

4 offender's mental health or military service member status. The assessment shall include a risks
5 assessment and be based, in part, upon the known availability of treatment resources available
6 to the court. The assessment shall also include recommendations for treatment of the conditions
7 which are indicating a need for treatment under the monitoring of the court and reflect a level of
8 risk assessed for the individual seeking admission. The court is not required to order an
9 assessment if a valid screening or assessment related to the present charge(s) pending against
10 the offender has been completed within the previous 60 days.

11 (b) The court may order the offender to complete substance abuse treatment in an
12 outpatient, inpatient, residential, or jail-based custodial treatment program, order the offender to
13 complete mental health counseling in an inpatient or outpatient basis, comply with all physicians
14 recommendations regarding medications, and complete all follow-up treatment. The mental
15 health issues for which treatment may be provided include, but are not limited to, post-traumatic
16 stress disorder, traumatic brain injury, and depression.

17 (c) *Mental health and substance abuse treatment.* — The court may maintain a network
18 of mental health treatment programs and substance abuse treatment programs representing a
19 continuum of graduated mental health and substance abuse treatment options commensurate
20 with the needs of offenders; these shall include programs with the VA, the department, this state,
21 and community-based programs.

22 (d) *Violation.* — The court may impose reasonable sanctions under the offender's written
23 agreement, including, but not limited to, imprisonment or dismissal of the offender from the
24 program. The court may reinstate criminal proceedings against him or her for a violation of
25 probation, conditional discharge, or supervision hearing, if the court finds from the evidence
26 presented, including, but not limited to, the reports or proffers of proof from the court's
27 professionals that:

28 (1) The offender is not performing satisfactorily in the assigned program;

29 (2) The offender is not benefitting from educational treatment or rehabilitation;

30 (3) The offender has engaged in criminal conduct rendering him or her unsuitable for the
31 program; or

32 (4) The offender has otherwise violated the terms and conditions of the program or his or
33 her sentence or is for any reason unable to participate.

34 (e) Termination. — Upon successful completion of the terms and conditions of the
35 program, the court may dismiss the original charges against the offender, successfully terminate
36 the offender's sentence, permit the offender to enter into a plea agreement to a lesser offense, or
37 otherwise discharge him or her from any further proceedings against him or her in the original
38 prosecution.

39 (f) Notwithstanding any provision of this code to the contrary, upon successful completion
40 of the terms and conditions of the program, or if the presiding judge determines the lack of the
41 ability to operate a motor vehicle is preventing program success, the court may expunge any
42 driving offenses that prevent the veteran offender from obtaining a West Virginia drivers license.